

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/CRIMINAL MISC.APPLICATION NO. 5581 of 2022**

BAK SAIYED @ BAKUKHAN S/O YASINKHAN PATHAN

Versus

STATE OF GUJARAT

Appearance:

MR.J.M.PANCHAL, SENIOR ADVOCATE WITH MR AV NAIR(5602) for the Applicant(s) No. 1

MS. MOXA THAKKAR, APP, for the Respondent(s) No. 1

CORAM:HONOURABLE MR. JUSTICE A.Y. KOGJE**Date : 15/06/2022****ORAL ORDER**

1. The present application is filed under Section 439 of the Code of Criminal Procedure, 1973, for regular bail in connection with FIR being **Part-II C.R.No.11191028201766 of 2020 registered with Vejalpur Police Station, Ahmedabad** for offence under Sections 3(1)(i), 3(1)(ii), 3(2), 3(3), 3(4), 3(5) and 4 of the Gujarat Control of Terrorism and Organized Crime Act, 2015

2. Learned Senior Advocate appearing on behalf of the applicant submits that considering the nature of the offence, the applicant may be enlarged on regular bail by imposing suitable conditions.

3. Learned APP appearing on behalf of the respondent-State has opposed grant of regular bail looking to the nature and gravity of the offence. It is submitted that though the definition of continuing offence as per GUJCTOC requires filing of the charge-sheet as per the judgment of the Apex Court however, there is ample material to establish the provisions of GUJCTOC

as per Section 2(a)(iii) of the Act where evidence in the nature of statement of witnesses to indicate that the applicant was handling the financial matters on behalf of the syndicate.

4. Learned Advocates appearing on behalf of the respective parties do not press for further reasoned order.

5. I have heard the learned advocates appearing on behalf of the respective parties and perused the papers. Following aspects are considered:-

- I. The FIR is registered on 08.10.2020 for the offence which is alleged to have taken place on 18.06.2021.
- II. The applicant is in jail since 18.6.2021.
- III. The investigation is concluded and charge-sheet is filed.
- IV. Submission of learned senior advocate that out of five offences against the applicant, one offence is beyond the period of 10 years as contemplated in the definition of 'continuing offence.'
- V. With regards to the another offence, no charge-sheet has been filed, whereas FIR qua the applicant has already been quashed.
- VI. With regard to yet another two offences, the same are under the provisions of Gambling Act, wherein punishment is not more than three years and hence, the definition of 'continuing unlawful activity' would not attract.
- VII. Reliance is placed by the applicant on the decision of the Apex Court in the case of **Mohamad Iliyas Mohamad Bilal Kapadiya v/s. State of Gujarat** in Special Leave to Appeal (Crl.) 1815 of 2012. In the opinion of

the Court requirement prima-facie is not met with, qua the applicant.

VIII. Learned APP under instructions of IO is unable to bring on record any special circumstances against the applicant.

6. In the facts and circumstances of the case and considering the nature of the allegations made against the applicant in the FIR, without discussing the evidence in detail, *prima facie*, this Court is of the opinion that this is a fit case to exercise the discretion and enlarge the applicant on regular bail.

7. Hence, the present application is allowed. The applicant is ordered to be released on regular bail in connection with FIR being **Part-II C.R.No.11191028201766 of 2020 registered with Vejalpur Police Station, Ahmedabad**, on executing a personal bond of Rs.10,000/- (Rupees Ten Thousand only) with one surety of the like amount to the satisfaction of the trial Court and subject to the conditions that he shall;

- (a) not take undue advantage of liberty or misuse liberty;
- (b) not act in a manner injurious to the interest of the prosecution & shall not obstruct or hamper the police investigation and shall not to play mischief with the evidence collected or yet to be collected by the police;
- (c) surrender passport, if any, to the Trial Court within a week;
- (d) not leave the State of Gujarat without prior permission of the Trial Court concerned;
- (e) mark presence before the concerned Police Station once in a month for a period of six

months between 11.00 a.m. and 2.00 p.m.;

- (f) furnish the present address of his residence to the Investigating Officer and also to the Court at the time of execution of the bond and shall not change the residence without prior permission of Trial Court;
- (g) not to enter limits of District Ahmedabd except for making presence and for attending the trial.

8. The authorities will release the applicant only if he is not required in connection with any other offence for the time being. If breach of any of the above conditions is committed, the Sessions Judge concerned will be free to issue warrant or take appropriate action in the matter.

9. Bail bond to be executed before the lower Court having jurisdiction to try the case. It will be open for the concerned Court to delete, modify and/or relax any of the above conditions, in accordance with law.

10. At the trial, the trial Court shall not be influenced by the observations of preliminary nature qua the evidence at this stage made by this Court while enlarging the applicant on bail.

11. Rule is made absolute to the aforesaid extent.

Direct service is permitted.

(A.Y. KOGJE, J)

SIDDHARTH